

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Northern District of CA on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. <b>CV 09-01635 SBA</b>	DATE FILED <b>04/14/2009</b>	U.S. DISTRICT COURT <b>Northern District of CA</b>
PLAINTIFF <b>ESCO CORP</b>		DEFENDANT <b>BERKELEY FORGE</b>
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <b>7,171,771</b>		***SEE COMPLAINT***
2 <b>7,174,661</b>		
3		
4		
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In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  <b>Richard W. Wicking</b>	(BY) DEPUTY CLERK  <b>Jessie Mosley</b>	DATE  <b>April 16, 2009</b>
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FILED  
2009 APR 14 P 3:51  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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E-filing

19 Attorneys for Plaintiff  
20 ESCO Corp.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 \* \* \*

25 ESCO CORP., an Oregon corporation

26 Plaintiff,

27 v.

28 BERKELEY FORGE & TOOL, INC.,  
a California Corporation,

Defendant.

CV 09

Case No.

1635

COMPLAINT FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

SBA

FILED  
FAX

1 **COMPLAINT**

2 Plaintiff ESCO Corp., by its attorneys, for its complaint against Defendant Berkeley  
3 Forge & Tool, Inc., hereby demands a jury trial and alleges as follows:

4 **THE PARTIES**

5 1. Plaintiff ESCO, Corp. ("ESCO") is a corporation organized and existing under the  
6 laws of the State of Oregon, and having corporate headquarters at 2141 NW 25th Avenue,  
7 Portland, Oregon 97210.

8 2. On information and belief, Defendant Berkeley Forge & Tool, Inc. ("Berkeley  
9 Forge") is a corporation organized and existing under the laws of the State of California with a  
10 principal place of business at 1331 Eastshore Highway, Berkeley, California, 94710.

11 **JURISDICTION AND VENUE**

12 3. This action is for patent infringement arising under the patent laws of the United  
13 States, 35 U.S.C. § 1 *et seq.*

14 4. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C.  
15 §§ 1331 and 1338(a).

16 5. This Court has personal jurisdiction over Berkeley Forge because Berkeley Forge,  
17 has done and is doing business in California, and in this judicial district. This Court also has  
18 personal jurisdiction over Berkeley Forge because, upon information and belief, Berkeley Forge,  
19 makes, offers for sale, sells, distributes, and ships products according to the claims of the  
20 patents-in-suit in the Northern District of California.

21 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b)  
22 because Berkeley Forge is doing business in the Northern District of California and because,  
23 upon information and belief, wrongful acts committed by Berkeley Forge have occurred in, and  
24 are causing injury to, ESCO in the Northern District of California.

25 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,171,771**

26 7. On February 6, 2007, the United States Patent and Trademark Office duly and  
27 legally issued U.S. Patent No. 7,171,771 ("the '771 patent") to inventor Terry L. Briscoe, who  
28

1 assigned to ESCO the entire right, title, and interest to the '771 patent, including all rights to  
2 recover for all infringements thereof. A copy of the '771 patent is attached as Exhibit A.

3 8. Berkeley Forge has infringed the '771 patent by making, using, offering to sell,  
4 selling, and/or importing products that are covered by one or more claims of the '771 patent,  
5 including, but not limited to, releasable coupling assemblies, at least some of which were sold  
6 under the "Unicorn Locking System" name.

7 9. ESCO has been damaged by Berkeley Forge's infringement.

8 10. Furthermore, Berkeley Forge's acts of infringement have been without express or  
9 implied license by ESCO, are in violation of ESCO's rights, and may continue unless enjoined  
10 by this Court.

11 11. Berkeley Forge has continued its infringement in willful disregard of the '771  
12 patent and the rights created thereunder.

13 12. This is an exceptional case because of Berkeley Forge's willful infringement.

14 13. ESCO has been and will continue to be irreparably harmed by Berkeley Forge's  
15 infringement of the '771 patent.

16 **COUNT II - INFRINGEMENT OF U.S. PATENT NO. 7,174,661**

17 14. On February 13, 2007, the United States Patent and Trademark Office duly and  
18 legally issued U.S. Patent No. 7,174,661 ("the '661 patent") to inventor Terry L. Briscoe, who  
19 assigned to ESCO the entire right, title, and interest to the '661 patent, including all rights to  
20 recover for all infringements thereof. A copy of the '661 patent is attached as Exhibit B.

21 15. Berkeley Forge has been infringing and continues to infringe the '661 patent by  
22 making, using, offering to sell, selling, and/or importing products that are covered by one or  
23 more claims of the '661 patent, including, but not limited to, releasable coupling assemblies, at  
24 least some of which were sold under the "Unicorn Locking System" name.

25 16. ESCO has been damaged by Berkeley Forge's infringement.

26 17. Furthermore, Berkeley Forge's acts of infringement have been without express or  
27 implied license by ESCO, are in violation of ESCO's rights, and will continue unless enjoined by  
28 this Court.

18. The '661 patent is currently under reexamination in the United States Patent and Trademark Office. ESCO believes that a certificate confirming the claims will be issued in the reexamination proceeding.

19. Berkeley Forge has continued its infringement in willful disregard of the '661 patent and the rights created thereunder.

20. This is an exceptional case because of Berkeley Forge's willful infringement.

21. ESCO has been and will continue to be irreparably harmed by Berkeley Forge's infringement of the '661 patent.

**RELIEF SOUGHT**

**WHEREFORE**, ESCO prays:

A. For an injunction against further infringement of the '771 and '661 patents by Berkeley Forge, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with it or controlled by it;

B. For damages to compensate ESCO for the infringement of the '771 and '661 patents, together with prejudgment and postjudgment interest;

C. For an assessment of costs against Berkeley Forge;

D. For treble damages pursuant to 35 U.S.C. § 284 because Berkeley Forge's infringement has been willful;

E. For judgment that this is an exceptional case under 35 U.S.C. § 285, and that Berkeley Forge shall pay to ESCO all its attorneys' fees; and

F. For all such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: April 14, 2009

By: 

Robert H. Scribner  
KIMBLE, MACMICHAEL & UPTON

Charles W. Shifley  
BANNER & WITCOFF, LTD.

**Attorneys for Plaintiff**  
ESCO, Corp.

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Respectfully submitted,

By:

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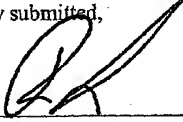
COMPLAINT FOR PATENT INFRINGEMENT - JURY DEMANDED

1                                    **NOTICE OF PARTY WITH FINANCIAL INTEREST**

2                    Pursuant to Civil L.R. 3-16 and Fed. R. Civ. Pro. 7.1, the undersigned certifies that as of  
3 this date, other than the named parties, there is no such interest to report.

4                                    Respectfully submitted,

5  
6 Dated: April 14, 2009

7                                    By:   
8 Robert H. Scribner  
9 KIMBLE, MACMICHAEL & UPTON

10 Charles W. Shifley  
11 Justin Busch  
12 BANNER & WITCOFF, LTD.

13                                    **Attorneys for Plaintiff**  
14                                    ESCO, Corp.